

TEXT OF MODIFIED REGULATIONS
TITLE 3. CALIFORNIA CODE OF REGULATIONS
DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS
CHAPTER 2. PESTICIDES
SUBCHAPTER 3. ASSESSMENTS
ARTICLE 2. MILL ASSESSMENT DISBURSEMENT CRITERIA

Current wording is indicated by regular type.
Originally proposed deletions are indicated by ~~strikeout~~.
Originally proposed additions are indicated by underline.
New proposed deletions are indicated by ~~italics and strikeout~~.
New proposed additions are indicated by **bold double underline**.

Amend section 6391 to read:

6391. County Reimbursement.

(a) Reimbursement for work specified in section 6393~~(b)~~**(b)** shall be made by April 1 of each year pursuant to section 12841 of the Food and Agricultural Code.

(b) Reimbursement shall not exceed costs incurred by the county as shown in the County Agricultural Commissioners' Annual Financial Statement, Item 5, entitled "Pesticide Use Enforcement."

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code.
Reference: Sections 12841 and 12844, Food and Agricultural Code.

Amend section 6393 to read:

6393. Criteria Items and Apportionment.

~~(a) The amount of funds allocated to each county for each criteria item shall be based on each county's costs or workload in proportion to the costs or workload of all counties, except as provided in section 6391(b) and 6395.~~

~~(a) From the total mill assessment funds available for disbursement to counties pursuant to Food and Agricultural Code section 12844, allocation of the funds shall be made in the following order:~~

~~—(1) Two million, seven hundred ninety thousand, five hundred eighty five dollars (\$2,790,585) shall be allocated among the counties in the same proportion as disbursed in the 2003/2004 fiscal year for the regulation of restricted materials.~~

~~(2) Each county shall be allocated a base amount equaling the greater of either the average of the amounts disbursed on April 1 of 2002, 2003, and 2004, or the amount disbursed on April 1, 2004, from the mill assessment fund for the regulation of pesticides that were established by the criteria in section 12844.~~

~~(3) The total amount allocated in (1) and (2) to each county shall not be less than \$27,600, unless the total mill assessment available for disbursement is less than those funds that were made available to the counties on April 1, 2004, or except as provided in section 6391(b).~~

~~(4) Any mill assessment funds remaining after the allocation specified in (1), (2), and (3) shall be disbursed among the counties pursuant to the following criteria items and corresponding apportionments:~~

~~(A) Apportionment, 50 percent: Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties;~~

~~(B) Apportionment, 25 percent: Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698 of the Business and Professions Code; and~~

~~(C) Apportionment, 25 percent: Based on commissioner requests to support restricted materials permitting and reporting system activities not to exceed \$100,000, and any other program element that the Director and the commissioners jointly agree upon. Funding request shall be submitted to the Director by March 1st of each year and jointly approved by the Director and the commissioners no later than June 30th.~~

(b) The apportionment for each criteria item shall be percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395(b)]. Such criteria items and corresponding apportionments are as follows:

(1) Apportionment, 15 percent: The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans;

(2) Apportionment, 3 percent: The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control operators providing notice of work in each county; active operator identification numbers in each county; and any additional similar workload activities approved jointly by the Director and the commissioners.

(3) Apportionment, 3 percent: The total number of private applicator certificate holders certified in each county;

(4) Apportionment, 30 percent: Work hours expended on pesticide-related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license;

(5) Apportionment, 28 percent: Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners;

(6) Apportionment, 2 percent: The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979;

(7) Apportionment, 4 percent: The total number of use report data records submitted by the county;

(8) Apportionment, 7 percent: The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and Notices of intent reviewed by each county;

(9) Apportionment, 3 percent: The total number of pesticide investigation reports completed in accordance with the prioritization plan agreed upon by the Director and commissioners and the commissioners' negotiated work plans;

(10) Apportionment, 2 percent: The total number of noncompliances documented during Pesticide Use Enforcement Program inspections; and

(11) Apportionment, 3 percent: Focused pesticide activities completed in accordance with the prioritization plan agreed upon by the Director and commissioners and the commissioners' negotiated work plans.

(b) Notwithstanding (a), if the total mill assessment funds available for disbursement to counties on April 1 of the current year are less than those funds that were made available to the counties on April 1, 2004, each county's allocation shall be reduced proportionately from (2). If additional reductions are necessary, then each county's allocation shall be reduced proportionately from (1).

(c) The provisions of this section shall be used to reimburse counties beginning on April 1, 2006, for work performed in the 2004/2005 fiscal year in accordance with Food and Agricultural Code section 12841.

(a) The amount of funds allocated to each county for each criteria item shall be based on each county's pest control activities, costs, workload, and performance in proportion to all counties, except as provided in sections 6391(b) and 6395.

(b) The apportionment for each criteria item shall be a percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395(b)]. Such criteria items and corresponding apportionments are as follows:

(1) Apportionment, 3 percent: The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans;

(2) Apportionment, 3 percent: The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control operators providing notice of work in each county; active operator identification numbers in each county; and any additional similar workload activities approved jointly by the Director and the commissioners.

(3) Apportionment, 3 percent: The total number of private applicator certificate holders certified in each county;

(4) Apportionment, 3 percent: Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license;

(5) Apportionment, 3 percent: Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners;

(6) Apportionment, 3 percent: The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979.

(7) Apportionment, 21 percent: The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county;

(8) Apportionment, 21 percent: Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698 of the Business and Professions Code; and

(9) Apportionment, 40 percent: Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties.

NOTE: Authority cited: Sections 11456, 12781 and 12844 Food and Agricultural Code.
Reference: Sections 12841 and 12844, Food and Agricultural Code.

Amend section 6394 to read:

6394. Effectiveness Performance Evaluation.

(a) The ~~d~~Director shall ~~annually~~ *regularly* evaluate ~~the each county~~ pesticide use enforcement program ~~in each county, at least every three years.~~ The evaluation shall measure the county's effectiveness in implementing ~~be in accordance with the state program areas recognized by the Director~~ in statute or regulation, or agreed upon by the county and ~~or~~ Director as an essential program element ~~guidelines recognized by the director.~~

(b) The ~~d~~Director shall provide a performance evaluation report to ~~each~~ the commissioner that documents the evaluation results, assesses the effectiveness of the county's pesticide use enforcement program, and identifies corrective actions performance in implementing the state program areas recognized by the Director. ~~The report shall identify the program areas that meet, exceed, or do not meet the essential program element guidelines recognized by the director. For program areas that do not meet these guidelines, the commissioner and the director shall jointly develop corrective actions to address deficient program areas.~~

The commissioner may appeal to the director to resolve conflicts concerning the evaluation results and the effectiveness assessment. The evaluation report will become final when conflicts are resolved and corrective actions, if needed, are identified.

(c) The Director and the commissioner shall jointly develop and document corrective actions to improve the county's pesticide use enforcement program in the program areas identified in the performance evaluation report. Corrective actions may be brought forth as a recommendation for mill assessment allocation under section ~~6393(4)(C)~~ 6396(a).

~~(e)~~(d) When any ~~program commissioner~~ fails to implement the jointly developed corrective actions ~~included in the evaluation report, or an agreement on corrective actions cannot be reached,~~ the Director shall take measures to improve the ~~effectiveness of the county's~~ pesticide use enforcement program in the county. The measures may include but are not limited to, a reduction ~~not to exceed 25 percent of~~ the county's annual mill assessment allocation ~~for the essential program element recognized by the Director under sections 6393 and 6395(a).~~

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code.
Reference: Sections 2281 and 12844, Food and Agricultural Code.

Repeat Amend section 6395 to read:

6395. Minimum Reimbursement.

~~(a) Determinations as specified in sections 6393 and 6394(c), notwithstanding, but subject to section 6391(b), no county shall be reimbursed funds less than the amount of funds reimbursed to the county pursuant to section 12844 of the Food and Agricultural Code, for the fiscal year ending June 30, 1979, unless the mill assessment funds available for allocation on March 1 of the current year are less than those funds available on March 1, 1980, in which case each county's reimbursement shall be reduced in the same proportion as it would have been reimbursed under this article.~~

~~(b) From the total funds available for allocation to counties, five percent shall be utilized for the stipulation of subsection (a) above.~~

(a) Determinations as specified in sections 6393 and 6394(c), notwithstanding, but subject to section 6391(b), no county shall be reimbursed funds less than the amount of funds reimbursed to the county pursuant to section 12844 of the Food and Agricultural Code, for the fiscal year ending June 30, 2003, or the average for fiscal years ending June 30, 2001, 2002, and 2003, whichever is greater, unless the mill assessment funds available for allocation on March 1 of the current year are less than \$14.3 million, in which case each county's reimbursement shall be reduced in the same proportion as it would have been reimbursed under this article. However, in no instances shall a county's minimum reimbursement be less than \$27,600 except as provided in section 6391(b).

(b) From the total funds available for allocation to counties, 30 percent shall be utilized for the stipulation of subsection (a) above.

NOTE: Authority cited: Sections 11456, 12781 and 12844 Food and Agricultural Code.
Reference: Sections 12841 and 12844, Food and Agricultural Code.

Amend section 6396 to read:

6396. Residual Funds.

~~(a) Any residual funds resulting after the application of sections 6391(b) or 6393(a)(4)(C), 6394(c), or 6395 shall be distributed to all counties not subject to Ssection 6395 6391(b), in the same proportion as funds reimbursed under Ssections 6393(a)(2) and 6394(c).~~

~~(b) Any residual funds resulting after the application of section 6394(d) shall be distributed to all counties not subject to the reductions allowed by section 6394(d) and shall be distributed in the same proportion as funds reimbursed under section 6393(a)(2).~~

(a) Any residual funds resulting after the application of section 6395 may be disbursed based on commissioner requests to support restricted materials permitting and reporting system activities, and any other program element that the Director and the California Agricultural Commissioners and Sealers Association jointly agree upon, on a case-by-case basis. Funding request shall be submitted to the Director by March 31st of each year and jointly approved by the Director and the California Agricultural Commissioners and Sealers Association no later than June 30th.

(b) Any residual funds resulting after the application of sections 6391, 6394(d), 6395, or 6396(a) shall be distributed to all counties not subject to section 6394(d), in the same proportion as funds reimbursed under section 6393.

NOTE: Authority cited: Sections 11456, 12781 and 12844 Food and Agricultural Code.
Reference: Sections 12844, Food and Agricultural Code.